

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Criminal Appeal 104 of 2007

MARTIN OTWANE OMULEFU APPELLANT

VRS

REPUBLIC RESPONDENT

JUDGMENT

The appellant Martin Otwane Omulefu was convicted of the offence of grievous harm contrary to section 234 of the Penal Code and sentenced to 4 years imprisonment with hard labour. He was also ordered to be under police supervision for a period of 2 years after completion of sentence.

Aggrieved by the said conviction and sentence, he filed this appeal and in his grounds of appeal, he challenges the conviction on the grounds that, it was against the weight of the evidence and the sentence was too harsh. He further stated that the evidence was fabricated, speculative and inconsistent. He raised an alibi which cast some doubt on the prosecution case.

As the first appellate court, I have gone through the evidence evaluated the same and come to an independent conclusion. This offence was committed at about 6.00 p.m. The complainant heard screams from the home the of the accused person. He went there and found his neighbours being beaten by their two sons namely Martin Otwane who is the appellant herein and his brother Ken Otulipa Otwane.

The two brothers were armed and attacked the complainant demanding to know what he had gone to do there.

He was ordered to leave. When he turned to walk away, the bother called Ken run ahead of him and blocked him, suddenly the complainant felt his ear cut and noticed that it was the appellant herein who cut him. When he fell down, the brother called Ken kicked him with a stick. When the appellant cut his ear with a panga he also injured his left eye which became blind. The complainant screamed and neighbours came to his rescue. The appellant fled when saw the said neighbours.

The complainant was rushed to Kocholia District Hospital where he was admitted until the following morning whereafter he went and reported the matter at Malaba Police Station and issued with a P3.

The assault on the complainant was witnessed by PW3, one Jacinta Itore, who is a neighbour and who also ran to the scene after she heard screams therefrom. The appellant was subsequently arrested and charged with this offence. In his defence he said he had differences with his father which led to an argument but he never saw the complainant at the scene. He called one witness to confirm that position.

In my judgment, the evidence of PW1 and PW3 is consistent and the injuries were confirmed by PW5 a clinical officer who filled the P3 form. The offence having taken place at about 6.00 p.m there is no doubt that both PW1 and PW3 saw the attackers clearly. It is instructive that the brother of the appellant called Ken pleaded guilty to the offence of assaulting the complainant and was sentenced. The evidence is overwhelming against the appellant and I see no merit in this appeal. The appeal against conviction is accordingly dismissed. On sentence the offence attracts life imprisonment. The four years imprisonment is therefore not excessive at all. If anything it is on the lower side. However, going by section 26 of Penal Code. I set aside the provision of hard labour and 2 years police supervision order imposed by the learned trial magistrate as the same is not provided for. The sentence therefore shall be 4 years

imprisonment. The end result is that, this appeal is dismissed.

Dated, Delivered and Signed this 23rd day of June 2009.

A. MBOGHOLI MSAGHA

JUDGE

Delivered in the presence of the applicant and the state counsel Mr. Onderi by F.N. Muchemi on the 23rd day of June 2009